

REMARKS

Applicant has reviewed and considered the final Office Action dated August 24, 1999. In response thereto, the specification and drawings are amended. Claims 16 and 19 are canceled without prejudice or disclaimer. As a result, claims 8–13, 15, and 17–18 are pending in the present application. Reconsideration of the present application is respectfully requested.

Claims 8–13, 15, 17 and 18 are rejected under 35 U.S.C. §102 and 103 as set forth in the office action dated 03/18/99.

Claim 8 recites a pot including a pot body, and a leg which has a base portion at a first end of the leg and a fluid conduit enabling fluid communication to and from the pot body and exiting from the leg proximate to the first end of the leg. The specification and Figure 1 are amended to clearly define the base portion and the first end of the leg. The claims are clearly supported by the specification and the drawings. It is respectfully submitted that no new issues or new matter is introduced in the amendment.

Shackelford discloses a method and apparatus for outdoor flower arrangements. In Shackelford, a transparent receptacle 10 is planted in the earth. The receptacle 10 includes anchor tubes 24. Each anchor tube includes a plurality of tube apertures 32 on the walls of the tube. The apertures 32 allow roots of sprouting seeds 14 to extend through and into the earth exterior to the receptacle. Shackelford does not disclose a base portion at a first end of the leg and a fluid conduit enabling fluid communication to and from the pot body and exiting from the leg proximate to the first end of the leg as claimed in claim 8. Applicant respectfully submits that claim 8 is not anticipated by Shackelford.

In addition, there is no motivation in Shackelford to have a base portion at a first end of the leg and a fluid conduit exiting from the leg proximate to the first end of the leg. In Shackelford, the objective is to produce aesthetically pleasing planting arrangements, more particularly, outdoor flow arrangements. Shackelford's transplant receptacle provides a decorative, protective housing for germinating seeds and **purposefully** lets the roots grow outwardly of the receptacle through the plurality of tube apertures. On the other hand, the present invention is to solve the problem that the root is easily damaged because of the roots having such outwardly growing tendency, e.g. towards a fluid level. The claimed pot is designed and configured to prevent the roots from growing towards the fluid level and/or exiting the leg via the fluid conduit. Accordingly, not only does Shackelford not disclose or teach the claimed invention, but also it **teaches away** from the claimed invention.

Furthermore, the anchor tubes 24 in Shackelford are planted in the earth, and the soil in the tubes, thus, are easily retained in the tubes by the earth. There is no need or motivation to have a base portion of the tube at the first end of the leg. Shackelford teaches that in most cases, the lower tube ends should be open to facilitate their insertion into the soil and provide better access for soil fluids between the surrounding and receptacle contained soil (see column 3, lines 60–65). Thus, Shackelford **teaches away** from having a base portion of the leg at the first end of the leg as claimed in claim 8.

Therefore, Applicant respectfully submits that claim 8 patentably distinguishes over Shackelford. Claims 9–13, 15, and 17–18, which are dependent from claim 8, are also patentable.

Claims 8–13 are also rejected under 35 U.S.C. §103(a) as being unpatentable over Moskowitz in view of Shackelford. There is no motivation or suggestion to combine Moskowitz with Shackelford. In addition, as discussed above, Shackelford teaches away from a leg having a base portion at the first end of the leg. Further, Moskowitz discloses an entirely different type of flower pot from Shackelford. It is not obvious to a person skilled in the art how to combine the two references to result in the claimed invention. Applicant respectfully submits that claims 8–13, 15, and 17–18 are patentable over the cited references.

In view of the above, it is respectfully submitted that the present application is in a condition for allowance. Reconsideration of the application and a favorable response are respectfully requested.

If a telephone conference would be helpful in resolving any remaining issues, please contact the undersigned at (612)336-4733.

Respectfully submitted,

MERCHANT & GOULD P.C.
3100 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402
FAX 612/332-9081
PHONE 612/332-5300 (general)

By 
Min S. Xu
Registration No. 39,536
AX/mas